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ABSTRACT

The chapter in the California Government Code commonly referred to as the Ralph M. Brown Act (Chapter 9, Division 2, Title 5) was enacted in 1953 and requires public boards to conduct open meetings. Since enactment, the legislature has amended it numerous times, and the attorney general's office and the courts have interpreted its provisions. The law states that "the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the Law that their actions be taken openly and that their deliberations be conducted openly." This review of the Brown Act is intended to assist school board members in understanding the intent as well as the letter of the law governing the deliberations and actions of school boards. The review covers requirements of the act and its specific and limited exceptions, the types of meetings to which it applies, the necessity for giving public notice of meetings, and the need to keep public records of meetings. Relevant court cases are also discussed. (Author/JM)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

The Board Meeting

Brown Act Rules

EA 015 491

California School Boards Association

Since a violation of the Brown Act can have far-reaching legal effects, including possible criminal prosecution, board members should be careful when conducting meetings. Anytime doubt arises as to whether the Brown Act would govern a particular action, it would be wise to contact your county counsel or school attorney for legal advice.

An important rule to remember is that all meetings of a majority of the board of education must be open and public, with the exceptions of certain subjects that may be discussed in closed sessions. Such exceptions are specifically defined and strictly construed and any deviation from these exceptions will most likely result in a violation of the Act. Court interpretations have generally been construed in favor of the public's right to know.

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Note On This Edition

Several amendments to the Brown Act became effective since the August 1981 edition. These are summarized below, and have been incorporated into the text.

SB 879, Chapter 968 — 1981 Statutes

Section 54953.3 amended, effective January 1, 1982. Any attendance list, register, questionnaire, or other similar document whether posted or circulated at a meeting must clearly state that signing or completion of the document is voluntary and not required for attendance at the meeting.

Section 54953.7 added, effective January 1, 1982. Legislative bodies or local agencies may impose standards allowing greater access to their meetings than proscribed by law. This applies also to appointed legislative bodies of elected legislative bodies where a majority of the members are under the authority of the elected legislative body.

Section 54957.2(b) amended, effective January 1, 1982. A legislative body may require that all or a majority of those members appointed to each legislative body by or under the authority of the elected legislative body keep a minute book of closed sessions.

AB 1003, Chapter 298 — 1982 Statutes

Section 54956.7 added, effective January 1, 1983. Permits the legislative body of a local agency to meet in closed session with an applicant for license renewal who has a criminal record.

Section 54957 amended, effective January 1, 1983. Expands the scope of closed session to include meetings held for the purpose of evaluation of employee performance.

— Robert Walters, Walters, Bukey and Shelburne
CSBA Legal Counsel

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The chapter in the Government Code commonly referred to as the Ralph M. Brown Act (Chapter 9, Division 2, Title 5), was enacted in 1953. Since enactment, the Legislature has amended it numerous times, and the Attorney General's office and the courts have interpreted its provisions.

This review of the Brown Act has been prepared to assist school board members in understanding the intent as well as the letter of the law governing the deliberations and actions of school boards.

The intent of the Legislature is very clear:

> . . . the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the Law that their actions be taken openly and that their deliberations be conducted openly.
>
> The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they retain control over the instruments that they have created.[1]

The board members are not to judge for themselves what the people should or should not know. Exceptions to the public meeting standard are specific and limited, as will be seen.

Public confidence is probably the greatest asset of a public official or agency. One cannot earn confidence by careless disregard of, or ignorance of, the provisions and intent of the law. In their meetings and relationships, boards should use wisdom and good judgment to ensure action which conforms to the law.

This review of the Brown Act will enable school boards to become more knowledgeable about the Act and will strengthen their relationships with the public.

Footnote
[1]Government Code 54950

Purpose of the Brown Act

The intent and purpose of the Brown Act (Government Code Sections 54950-54961) is to ensure that the "(A)ctions (of local legislative bodies) be taken openly and that their deliberations be conducted openly."[2] The core of the Act is Section 54953 which declares, "All meetings of the legislative body of a local agency shall be open and public . . ." The Education Code also requires school board meetings to be open to the public.[3]

These code sections make clear that school boards must act and conduct all deliberations at open meetings, unless the subject matter comes within the sections allowing boards to hold closed sessions.

Enforcement of the Brown Act

Government Code Section 54959 provides a criminal penalty: "Each member of a legislative body who attends a meeting . . . where action is taken in violation of any provision of (the Brown Act), with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor."

Civil proceedings are available either to stop or prevent a violation or threatened violation, or to determine the applicability of the Brown Act to actions or potential actions.[4] The civil proceedings are available to any interested person.

It is important to note that Government Code Section 54959 applies only to meetings *where action is taken*, and not to meetings confined to *deliberations*.

> Critics of open meeting laws have been troubled by the prospect of criminal prosecutions against public officials who make the wrong guess when confronted with an ambiguous situation . . . Apparently sharing this concern, the legislature has made the criminal sanction narrower than the law's declaration of intended coverage. Not every violation of the Brown Act is a violation of Section 54959. The misdemeanor penalty is focused on the meeting where action is taken, not on the meeting confined to deliberation.[5]

Once a board takes action upon a given item, the action is not invalidated even though the meeting may have been in

violation of the Brown Act. This conclusion has consistently been reached in California courts.[6] In carrying out the Brown Act provisions, the board may not charge fees of the public unless specifically allowed to do so by law. An example of a permissible fee is that to cover costs of making copies of public records for public inspection.[7]

What is a "Meeting"?

The Brown Act does not define what a meeting is. However, Attorney General opinions and court decisions clearly indicate the term is *not* limited to formal meetings. In the *Sacramento Newspaper* case, supra, the court stated:

> (T)he term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business.[8]

In determining whether a meeting is taking place, the formality or informality of the meeting cannot be used as a guideline. The main concern is whether a majority, or quorum, of the board is present and whether deliberations of public business within the responsibilities of the board are taking place. The locality of the meeting — whether at a party or behind closed doors — is immaterial for the purposes of the Brown Act.

In a footnote in the *Sacramento Newspaper* case, the court commented:

> Although one might hypothesize quasi-social occasions whose characterization as a meeting would be debatable, the difference between a social occasion and one arranged for the pursuit of the public's business will usually be quite apparent.[9]

The mere presence of a majority of the board members at a social function does not create a meeting. But if a quorum of the members is present, they should not take any collective action or deliberate collectively on school matters.

The Brown Act does not preclude all board members from attending conferences or workshops to increase their effectiveness as board members and to keep abreast of developments

in education. However, such conferences cannot be used to circumvent the Act.

The Act also concerns itself with the meetings of commissions or committees set up by *formal* action of the board. Such committees (e.g., citizens advisory committees) are subject to the public meeting requirements. However, a committee or commission composed solely of board members with less than a quorum is not governed by the Act, and, therefore, may meet in private.[10]

Further, as spelled out in Government Code Section 54953.1, the Act specifically allows members of a board to give testimony before the Grand Jury in private, either as individuals or as a body.

What is "Action Taken"?

> '(A)ction taken' means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, or order or ordinance.[11]

Whether or not "action" has occurred is important since individual board members could be subject to criminal prosecution as set forth above; only meetings where action is taken may result in the misdemeanor penalty.

An example of a court's interpretation of "action taken"

came in the *Desert Center Unified School District* Superior Court decision. In that case, the board members individually signed a letter sent to all the employees in the district warning them of the possible consequences of a strike. The court held the individual signing of the letter was "action taken" and violation of the Brown Act since not done at a public meeting.

What is "Deliberation"?

As stated above, the Brown Act applies to meetings where action or deliberation takes place and declares that both must take place openly and publicly.[12] In discussing both "action" and "deliberation," the court in *Sacramento Newspaper*, supra, stated the following:

> Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. To 'deliberate' is to examine, weigh, and reflect upon the reasons for or against the choice . . . Public choices are shaped by reasons of policy, or both . . . Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.[13]

Footnotes

[2]Government Code 54950.
[3]Education Code 35145.
[4]Government Code 54950.
[5]*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, (1968) 263 Cal. App. 2d 41, 48; 69 Cal. Rptr. 480.
[6]*Stribling v. Mailiard* (1970) 6 Cal. App. 3d 470, 474-475, 85 Cal. Rptr. 924; *Greer v. Board of Education* (1975) 47 Cal. App. 3d 98, 122-123, 121 Cal. Rptr. 542; and *Griswold v. Mt. Diablo Unified School District* (1975) 63 Cal. App. 3d 648, 658, 134 Cal. Rptr. 3.
[7]Government Code Section 54956.6.
[8]Ibid., page 51.
[9]Ibid., page 50, footnote 8.
[10]Government Code 54952.3. The less-than-a-quorum exception was confirmed in the 1978 decision *Henderson v. Los Angeles City Board of Education* 78 Cal. App. 3d 875, 881-882, 144 Cal. Rptr. 568.
[11]Government Code 54952.6.
[12]Government Code 54950.
[13]*Sacramento Newspaper Guild*, supra, at page 47.

Regular Meetings

This is the normal business meeting of the governing board at which district business is conducted. The time and place of such regular meetings must be set by the board. All regular meetings must be open and public.[14]

Special Meetings

Special meetings are designed to allow the board to deliberate and/or act at a public session prior to the next regularly scheduled board meeting. Special meetings usually take place in order to meet time deadlines. So long as proper notice is timely given and an agenda is timely posted (see page 13, et seq), such a meeting is proper. Only business which is posted in the notice of the meetings is properly considered.[15]

Adjourned Meetings

If the business of a board has not been completed at a regular or special meeting, or at an adjourned regular or adjourned special meeting, the board may adjourn that meeting to a subsequent time so long as proper notice of the adjournment is conspicuously posted within 24 hours after the time of the adjournment.[16]

Closed Sessions

A closed session is an exception to the open and public meeting requirement of the Brown Act. The Legislature has seen fit to allow business affecting the public to be conducted behind closed doors in certain instances. If a board has the right to meet in closed session, it may consider and act upon the matter. Although Section 54957, which generally permits closed sessions, speaks only of authorizing the board's *holding* closed sessions and *considering* such matters as personnel problems, a board may *take action* as well. In a 1971 decision the California appellate court confirmed that the statutory language does not confine boards to deliberating in closed session.[17]

The following are the recognized exceptions to the open meeting requirement for closed sessions:

1. The consideration of the appointment, employment, evaluation of performance, or dismissal of a public employee, unless the employee requests a public hearing.[18]
2. The hearing of complaints or charges brought against a public employee, unless such employee requests a public hearing.[19]
3. The consideration of an applicant for a license or license renewal who has a criminal record (Government Code 54956.7).
4. Discussions with a board's representatives prior to and during consultations and discussions with representatives of employee organizations on matters of salaries, salary schedules or compensation in the form of fringe benefits.[20] This exception was added in 1968 and its purpose was to grant local school boards the same advantages enjoyed by public school employees in planning money proposals for the "meet and confer" process when they act not as a governmental entity, but as an employer.

   At the time the exception was added, the Winton Act governed the process of negotiations between school boards and their employees. With the 1976 enactment of the Rodda Act (SB 160), the process of collective bargaining in public schools and the ability of school boards to hold closed sessions within that process are now governed by the more detailed provisions of the Rodda Act, or the Educational Employment Relations Act (E.E.R.A.), Government Code Sections 3540 et seq.

   Government Code Section 3549.1 specifically exempts *certain activities within the collective bargaining process* from the application of the Brown Act:

   - Any meeting and negotiating discussion between a public school employer and a recognized or certified

employee organization.

- Any meeting of a mediator with either party or both parties to the meeting and conferring process.
- Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.
- Any closed session of the public school employer or between the public school employer and its designated representative for the purposes of discussing its position regarding any matter within the scope of representation and of instructing its designated representatives.

However, the board may meet in closed session to discuss labor negotiations only if it has a representative. If none of the board members has been designated as the board's representative, or if the board has no outside negotiator, but is instead conducting negotiations as a board, the closed session exception does *not* apply and discussions must be conducted in public. (57 Ops. Cal. Atty. Gen. 209).

Further, particular attention should be paid to the fourth item above, (d) of Section 3549.1, and the breadth of its language: Any closed session is exempted where the purpose is to discuss a position on any matter *within the scope of representation*, enumerated in Government Code Section 3543.2.

Although the full extent of the EERA's scope of representation is not yet discernible, thus making it difficult to judge how broadly interpreted Section 3549.1 (d) might be, an Attorney General's opinion sheds some light. In discussing permitted closed sessions under the Winton Act, the opinion states: "However, it is nevertheless concluded that where those specified items are involved in the bargaining process in conjunction with other 'meet and confer' items, and inextricably entwined

with them, closed sessions will be permitted on all such additional and related 'meet and confer' items."[21] The meet and confer items of the Winton Act are analogous to the enumerated meet and negotiate items of the EERA.

In addition, for the above meetings, the notice requirements of the Education Code (48 hours for regular meetings and 24 hours for special meetings) do not apply

pursuant to the EERA.

5. The consideration of matters affecting the national security.[22]
6. The consideration of legal matters within the attorney/client privilege. This exception, though not expressed in the Brown Act, was found to be implied from the Act by an appellate court.[23] In the *Sacramento Newspaper* case, the trial court enjoined a majority of a board of supervisors from meeting privately "for whatever purpose," with the exception of personnel matters and national security matters. The Court of Appeal ruled the temporary restraining order to be too broad and modified it to allow attorney/client closed sessions. In reaching the decision, the Court felt the enactment of the Brown Act in no way conflicted with the attorney/client privilege of con-

fidential communication. Just as private individuals have the right to confer in private with their attorney, so should public agencies. "There is a public entitlement to the effective aid of legal counsel in civil litigation. Effective aid is impossible if opportunity for confidential legal advice is banned."[24]

The Court commented that if attorneys for public agencies were forced to discuss publicly the merits of a lawsuit, the front seats would be occupied by adversaries, ready to capitalize on every point of weakness. The Brown Act was not intended to perpetrate this type of legal handicap by imposing on governmental agencies a greater restriction than exists for the private individual who consults his attorney.

> Public board members, sworn to uphold the law, may not arbitrarily or unnecessarily inflate confidentiality for the purpose of defeating the spread of the public meeting law. Neither the attorney's presence nor the happenstance of some kind of lawsuit may serve as the pretext for secret consultations whose revelation will not injure the public interest.[25]

The Court nevertheless refused to generalize about the actual invoking of the attorney/client privilege. When the privilege may be invoked must hinge on the particular facts involved. With this in mind, the court earlier stated that the use of the privilege would be strictly construed to protect the public's right to know.

7. Discussions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies on matters posing a threat to the security of public buildings, public services or facilities.[26]
8. Discussions with a state conciliator who had intervened as authorized by law. This exception was due to the privileged character of a state conciliator's records and to allow a board to better review its position and instruct its designated representatives.[27]

9. In consideration of the suspension of, or disciplinary action or any other action including expulsion, in connection with any pupil of the district, if a public hearing would cause information to be divulged concerning pupils which would violate Education Code Sections 49073 or 49076. However, the pupil's parent or guardian may request that the hearing be public. Whether the meeting is open or closed, the final action taken must be at a public meeting and must be made a public record of the district.[28]

Footnotes

[14]Government Code 54954; Education Code 35145.
[15]Government Code Section 54956.
[16]Government Code 54955.
[17]*Lucas v. Armigo Joint Union High School District*, (1971) 18 Cal. App. 3d 988, 991-992, 96 Cal. Rptr. 431.
[18]Government Code 54957.
[19]Ibid.
[20]Government Code 54957.6.
[21]61 Ops. Atty. Gen. 323, 327, (1978). Please note, though the Opinions of the Attorney General are considered well-reasoned and persuasive, they are not binding upon other public officers or attorneys, and thus are not the law of the state.
[22]Government Code 54957.
[23]Cf. *Sacramento Newspaper Guild*, supra, at pages 52 et seq.
[24]Cf. *Sacramento Newspaper Guild*, supra, at page 56.
[25]Ibid., at page 58.
[26]Government Code 54957.
[27]Government Code 54957.6.
[28]Education Code 35146, 48914.

Regular Meetings

Both Education Code Section 35140 and Government Code Section 54954 require a board to determine the time and place of regular meetings. The only notice required is that an agenda be posted where "members of the public," including district employees, may view it at least 48 hours prior to a regular meeting.[29] Members of the public must be able to place items on the agenda and to address the board on all agenda items as they occur.[30]

It is unclear whether a board may *deliberate* on subjects not included on a board agenda. Apparently, a board could be precluded from deliberating on items not on the required agenda since the purpose of the Brown Act is to require both deliberations *and* actions to be conducted openly for the benefit of the public. In the *Sacramento Newspaper* case, supra, the Court of Appeal stressed the importance of the deliberation process — if an item were not on the agenda the public would not be aware of the scope of the meeting and may not desire to attend. As stated in another case, "It is a well known fact that public meetings of local governing bodies are sparsely attended by the public at large *unless* an issue vitally affecting their interests is to be heard.[31]

As pointed out above, the only penalty for deliberation without action, in violation of the Act, would be injunctive relief.

Just how far a board must go in notifying the public of intended or potential action is not totally clear. In its most recent amendment of Education Code Section 35145, the Legislature imposed an obligation to include on an agenda those items on which the governing board *may* take action. Evidently, however, this notice does not have to extend to *what action* may be taken. In *Phillips v. Seely*, a non-education case involving action by a County Board of Supervisors to contract with a private attorney for defense of indigents, a segment of the case centered on the adequacy of notice regarding the meeting at which the contract was executed. Referring to the

Carlson v. Paradise decision and its statement of public policy favoring open and duly noticed meetings, the Phillips court said

> We strongly reaffirm the foregoing rule, with the observation that where the subject matter is sufficiently defined to apprise the public of the matter to be considered and notice has been given in the manner required by law, the governing board is not required to give further special notice of what action it might take.[32]

In a 1973 addition to the statutes, the Legislature imposed special notice provisions. Districts subject to the Brown Act must mail notice of all regular meetings to any district landowner who has requested such notice in writing. The request must be renewed annually and may be subject to a reasonable charge.[33]

Special Meetings

When a special meeting is called, written notification must be given to each member of the board and to each local newspaper of general circulation, radio station, or television station requesting notice in writing. Such notice must be received at least 24 hours prior to the special meeting.[34] The call and notice of the meeting must also specify the time and place of the meeting and the specific business to be transacted. No other business may be considered. This notice must be given even if no action is taken at the special meeting. A board member has the right to waive the notice requirement by filing a "written waiver of notice" prior to or at the time of the meeting. Such notice is also waived if the member is present.[35]

The requirement regarding posting agendas and the notice provisions for landowners are applicable for special meetings also.[36]

In situations entailing threatened or actual disruption of public facilities, the board may call emergency meetings without complying with the 24 hour notice requirement. Emergency situations are defined in Government Code Section 54956.5 as follows: 1) a work stoppage which severely impairs

public health or safety, as determined by a majority of members of the board, or; 2) a crippling disaster impairing public health or safety. While the 24-hour notice requirement does not apply to these emergency special meetings, the board still must give newspapers, radio or television stations that have requested notice of special meetings a one-hour notice by telephone, if the telephones are operating. If the telephones are not working, notice must be given as soon as possible after the meeting. Additionally, *no closed session may be called during such an emergency special meeting.* (This proviso contradicts "Closed Sessions," below.) All requirements for special meetings, other than the notice requirement, must be complied with.

Adjourned Meetings

As stated above, regular or special meetings may be adjourned to a later time.[37] In interpreting this section, the Attorney General has stated that notice posted near the entrance of the meeting place within 24 hours after adjournment is sufficient.[38] Apparently, however, this notice would, in fact, be insufficient in the limited case of an adjourned regular meeting or regular meeting where no board members were present. In this instance, Government Code 54955 *permits* the clerk or secretary to declare the meeting adjourned to a stated time and place and then *requires* notice to be given in accordance with the notice provisions governing special meetings.

Closed Sessions

A closed session may normally be conducted only during a regular or special meeting that has been called with proper notification.[39] However, in limited circumstances (see the threat to public buildings and the national security provisions of the noted section), a regular or special meeting apparently need not precede the holding of a closed session. In addition, the *Lucas* case, supra, states that a call for a closed session need not appear on the agenda of a *regular* meeting for a board

to properly go into closed session. However, in the case of special, adjourned, and continued meetings, the closed session must appear as part of the notice required for such meetings. Prior to or after any closed session, the board must state the general reason or reasons for the closed session, and may cite the legal authority under which the session is held. In the closed session, the board may consider only those matters covered in the statement.[40]

Collective Bargaining

The EERA contains its own notice provision, imposing the obligation upon public school employers and exclusive representatives to submit initial proposals relating to matters within the scope of representation to the public at a meeting of the public school employer.[41] The negotiation procedures cannot advance until the public has been informed and has had the opportunity to express opinions at a public meeting.[42]

Matters arising after the submission of the initial proposals must be made public and votes taken on such additional matters must be publicly disclosed within 24 hours.[43]

No specific guidelines or requirements for public disclosure under GC 3547 are provided. However, the type of meeting at which action is to be taken or disclosure of an initial proposal were to occur at a special meeting, the above-enumerated notice provisions for special meetings would apply.

Other Special Instances

District inquiries in two other special instances deserve mention: meetings with consultants and workshop sessions.

Meetings called by a consultant to discuss district matters with the board must adhere to the relevant public notice provisions.

Boards may call a workshop session in or out of the district provided the appropriate public notice and posting provisions are adhered to and the public is not excluded. Such workshop

sessions fall under the closed session provisions of the Brown Act if district personnel are to be discussed.

Footnotes

[29]Education Code 35145.
[30]Education Code Section 35145.5.
[31]*Carlson v. Paradise Unified School District*, (1971) 8 Cal. App. 3d 196, 95 Cal. Rptr. 650.
[32]Phillips v. Seely (1974) 43 Cal. App. 3d 104, 120, 117 Cal. Rptr. 863.
[33]Government Code 54954.1.
[34]Government Code Section 54956.
[35]Government Code 54956; Education Code 35144.
[36]Education Code Section 35145(b).
[37]Government Code 54955.
[38]32 Ops. Atty. Gen. 240, (1958).
[39]Government Code 54957.
[40]Government Code Section 54957.7.
[41]Government Code 3547(a).
[42]Government Code 3547(b).
[43]Government Code 3547(d).

Regular, Special, and Adjourned Meetings

Education Code Section 35145 provides:

> (M)inutes (must be) taken at all such meetings, recording all action taken by the governing board. Such minutes shall constitute public records, and shall be available to the public . . . Both the unadopted and the formally adopted minutes are public records and must be available to the public.

Also, Education Code Section 35163 requires every official action of the board to be affirmed by a formal vote of the members of the board and kept in a journal. Agendas and other writings when presented for consideration by a board member, officer, employee, or agent, to a majority of the board members, are public records as soon as they are distributed and, as such, must be made available for public inspection at the time of distribution.[44] Section 6254 of the Government Code lists several exceptions to the above rule. Included in these exceptions are preliminary drafts or memoranda which are not retained by the board in the ordinary course of business, provided that the public interest is clearly better served by the withholding of such documents; records pertaining to pending litigation in which the district is a party; and personnel files. The board may charge a reasonable fee or deposit for copies of the records.[45]

Any person attending a regular, special, or adjourned board meeting has the right to record the proceedings on a tape recorder unless the board reasonably finds that such recording is or would be disruptive of the meeting.[46]

Closed Sessions

Education Code Section 35145 does not require minutes to be kept for closed sessions which are held under Government Code Sections 54957 (personnel matters) and 54957.6 (negotiations), or under Education Code Sections 35146 (student discipline) and 48914 (student expulsion).

If action is taken by a board in closed session under the Education Code sections noted, final action must be taken at a

public meeting and the result of such action shall be a public record of the school district.[47] The board must publicly report at the public meeting at which the closed session is held or at the next public meeting any action taken and any role call vote on that action to appoint, employ, or dismiss a public employee.[48]

Proceedings of a closed session under the Government Code sections cited are not of public record, though minutes may be made of the proceedings. Under Government Code Section 54957.2(a), the board *may* designate someone to attend the closed sessions for the purpose of keeping and entering in a minute book a record of topics discussed and decisions made at such meetings. Only the members of the board, or a court of general jurisdiction acting upon an allegation of violation of the Brown Act, have access to the minute book. However, recent case law indicates that the U.S. Department of Education under 34 CFR 100.6(c) may be permitted access to closed session minutes if the purpose is to obtain information related to compliance with a federal program from which the school district receives federal financial assistance. Again, an official action, even though stemming from a closed session, must be affirmed by the governing board in a public meeting.[50]

Footnotes

[44]Government Code Section 54957.5.
[45]Ibid.
[46]Government Code Section 54953.5.
[47]Education Code 35146, 48914(g).
[48]Government Code Section 54957.1.
[49]*U.S. v. Phoenix Union High School District.*
[50]Education Code 35163.